

Approval to Issue a Use Permit to the ARC in Hawai'i, for the use of a portion (25-parking stalls) of the State of Hawai'i, Department of Defense paved parking lot, located at the intersection of Diamond Head Road and 22<sup>nd</sup> Avenue, Honolulu, Oahu TMK (1) 3-1-042: 041

**LEGAL REFERENCE:**

Section 171-11 and 55, Hawai'i Revised Statutes.

**APPLICANT / LESSEE:**

The ARC in Hawaii, a public non-profit organization, whose principal place of business is 3989 Diamond Head Road, Honolulu, Hawai'i 968116.

**LOCATION AND TAX MAP KEY:**

Parking Lot at the intersection of Diamond Head Road and 22<sup>nd</sup> Avenue, Honolulu, Island of Oahu, identified by Tax Map Key: 1<sup>st</sup> Division, 3-1-042: 041.

**AREA (refer to attached plan):**

Parking Lot = 87 parking stalls  
Proposed Use = 25 parking stalls

**ZONING:**

State Land Use District:	Urban District
City & County of Honolulu:	R-10 Residential District
Special District:	Diamond Head Special Design District

**LAND TITLE STATUS:**

Section 5(b) lands of the Hawaii Admission Act, i.e. ceded land

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

**CURRENT USE STATUS:**

Land presently encumbered by Governor's Executive Order No. 1997, setting aside the land to the Department of Defense for Diamond Head Reservation.

**CHARACTER OF USE:**

For the purpose of employee parking by the ARC in Hawai'i.

TERM:

Not to exceed One (1) year.

COMMENCEMENT DATE:

To be determined by the Adjutant General.

RENT:

Rent will be assessed in accordance with the following rate schedule to reimburse the DOD for utility, staff and maintenance/repairs:

Parking: \$500.00/month

CHAPTER 343, HRS – ENVIRONMENTAL ASSESSMENT:

Pursuant to Section 11-200-8(a), Environmental Impact Statement Rules of the Department of Health, State of Hawai‘i, this disposition is exempt from requirements regarding preparation of an environmental assessment, negative declaration, or environmental impact statement as required by Chapter 343, Hawai‘i Revised Statutes, as amended, relating to Environmental Assessments, because the proposed action falls within Exemption Class #1 (Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing.), Comprehensive Exemption List for the Department of Defense, dated August 9, 2013, as approved by the Environmental Quality Control Council.

DCCA VERIFICATION:

Place of business registration confirmed: YES  
Registered business name confirmed: YES  
Applicant in good standing confirmed: YES

REMARKS:

The Arc in Hawaii is a 501(c)(3) not-for-profit organization, providing services for people with intellectual and developmental disabilities on Oahu. Their facility, located at 3989 Diamond Head Road, adjoins the DOD Headquarters on one side, and the DOD’s paved parking lot on the other. Due to their limited on-site parking availability, the Arc in Hawaii requests use of a portion of the DOD’s parking lot for their staff parking. The Arc in Hawaii will be assessed at a rate of \$500/month to reimburse the DOD for the utility and maintenance costs relative to the use of the parking lot.

This parking lot contains a total of 87 parking stalls, and is generally not used except for DOD mission activities such as those occurring at the Armory Facility (Building 300) located directly across the parking lot, or at the DOD Headquarters at 3949 Diamond Head Road. Use is also occasionally permitted to other requestors (on a non-interference basis) such as the film industry upon approval of the Dept. of Business, Economic Development and Tourism.

The DOD is willing to allow the ARC in Hawai'i to use of said property on a "non-interference" basis, for this purpose only.

RECOMMENDATION: That the Board:

- A. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
- B. Consent to the Use Permit between the Department of Defense and the ARC in Hawai'i, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following:
  1. Review and approval by the Department of the Attorney General; and
  2. Such other terms and conditions as may be prescribed by the Adjutant General to best serve the interests of the State.

Respectfully submitted,

  
DARRYLL D.M. WONG  
Major General  
Hawai'i National Guard  
Adjutant General

APPROVED FOR SUBMITTAL:

  
WILLIAM J. AILA, JR.  
Chairperson and Member

## USE PERMIT

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This Use Permit is made between the **Department of Defense, State of Hawaii**, whose principal place of business is Building 306, 3949 Diamond Head Road, Honolulu, Hawaii 96816-4495 and the **The Arc in Hawaii**, whose principal place of business is 3989 Diamond Head Road, Honolulu, Hawaii 96816, hereinafter called the "Permittee," under the authority of Section 121-19, Hawaii Revised Statutes (HRS).

The period of this Use Permit is for a term of **one ( 1 ) year** beginning on **June 01, 2014** through **May 31, 2015**. This Use Permit is for the specific use of:

**Department of Defense's (DOD) Fort Ruger Parking Lot at the corner of 22<sup>nd</sup> Avenue and Diamond Head Road**

The conditions under which this Permit is granted are as follows:

1. The Permittee shall use only the designated areas shown on "Attachment A" as parking areas for Permittee's cars. The designated parking areas can accommodate an estimated twenty five (25) cars.
  - a. Parking schedule shall be from Monday to Saturday, starting from 0630 hrs to 1700 hrs.
  - b. The Permittee shall provide DOD with a list of the Permittee's employee-users' name and vehicle information.
  - c. Maintenance or service work is not allowed inside the property.
  - d. The Permittee will park vehicles at Permittee's own risk. DOD will not provide security for the Permittee's vehicles.
2. The exercise of the privileges hereby granted shall be under the general supervision of the officer having immediate jurisdiction over the property and subject to such rules and regulations as may be prescribed by him.
3. The Permittee agrees that the granting of this Use Permit will in no way interfere with the use of the said facility for the administration and training of Units of the Reserve Forces of the United States.
4. The State of Hawaii reserves the right for its officers, agents, and employees to enter into the said facilities at anytime for the purpose of inspection and inventory and when otherwise deemed necessary for the protection of the interest of the State of Hawaii.
5. The Permittee has inspected and knows the condition of the said facilities and accepts the same without any representation or warranty whatsoever on the part of

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the State of Hawaii, and without any obligation or requirement on the part of the State of Hawaii to make any alterations, repairs or additions thereto. The State of Hawaii shall not be responsible for any damage to the contents of anything that are stored in the facility.

6. The State of Hawaii reserves the right to designate the exact location for any of the Permittee's equipment and to approve the type of equipment to be used.
7. The Permittee shall not construct any permanent structure on the above described facilities and shall not construct any temporary structure or advertising sign thereon without the prior written consent of the Adjutant General or by his/her designated Representative.
8. The Permittee shall keep the facilities and improvements in a clean, sanitary, and orderly condition, and shall not store any hazardous materials such as biological, chemical, and/or radioactive materials that pose a threat to life, health, and safety.
9. The Permittee shall not make, permit or suffer, any waste, strip, spoil, nuisance or unlawful, improper or offensive use of the facilities.
10. Permittee assumes full responsibility for the risk of any bodily injury, death or property damage, or loss which may arise from, or is in any way connected with, the use of the facilities herein granted.
11. The State of Hawaii, its agents, officers or employees, shall not be responsible for damages to, or loss of property, death or injury to any persons which may arise from or is in any way connected with the activities of the Permittee, its agents, officers, servants, employees or others invited onto the premises by any one of them, in using the facilities herein granted or which may arise from the activities of the State of Hawaii, its agents, officers or employees, on the said premises.
12. Permittee, on behalf of itself, its officers, agents, servants, employees, assigns and others who may be on, of using the facilities herein granted at their invitation or the invitation of any one of them, hereby releases, waives and discharges the State of Hawaii, its agents, officers, or employees, **from all liability** for any bodily injury, death or property damage or loss which may arise from, or is in any way connected with, the use of the facilities herein granted.
13. The Permittee, on behalf of itself, its officers, agents, servants, employees and invitees, **agrees and promises to indemnify, defend and hold harmless** the State of Hawaii, its agents, officers and employees, from any and all claims, demands, costs and judgments for any bodily injury, death or property damage or loss which may arise from, or is in any way connected with, the activities of the Permittee, its agents, officers, servants, employees or others invited onto the

- premises by any one of them, in using the facilities herein granted or which may arise from the activities of the State of Hawaii, its agents, officers or employees, on the said premises.
14. The Permittee shall, at the Permittee's own expense, purchase and maintain a standard form fire and extended coverage property insurance policy to insure the government-owned buildings, facilities and improvements located on the premises. Insurance will be written in an amount equal to 100% of the current replacement cost of the buildings, facilities and improvements. Coverage shall be written on a replacement cost basis. A copy of the policy shall be sent to the State of Hawaii Department of Defense, Engineering Office, attention: Chief Engineering Officer
  15. The Permittee shall also purchase and maintain, at the Permittee's own expense liability insurance acceptable to the State in full force and effect throughout the term of this permit. A copy of the policy shall be sent to the State of Hawaii Department of Defense, Engineering Office, Attention: Chief Engineering Officer
  16. The policy or policies of insurance maintained by the Permittee shall provide the following insurance coverage:
    - a. **General Liability and Personal Injury \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate insurance;**
    - b. WC and Employer's Liability
    - c. Property Insurance
  17. Each insurance policy or policies required by this permit shall contain the following clauses:
    - a. This insurance shall not be canceled, limited in scope of coverage or non-renewed until after 30 days written notice has been give to the Department of Defense.
    - b. All rights of subrogation are hereby waived against the State of Hawaii, its officers, employees, and agents.
    - c. A standard loss payee clause naming the State of Hawaii as loss payee.
    - d. A provision making the State of Hawaii and all of its agents, officers and employees additional insured under the policy or policies.
  18. The Permittee agrees to deposit with the Office of the Adjutant General, on or before the effective date of this permit, certificates of insurance necessary to

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satisfy the State that the insurance provisions of this permit have been complied with and to keep such insurance in effect and the certificates thereof on deposit with the State during the entire term of this permit.

19. The procuring of such required policy or policies of insurance shall not be construed to limit Permittee's liability hereunder not to fulfill the indemnification, defense and hold harmless provisions and requirements of this permit. Notwithstanding said policy or policies of insurance, Permittee shall be obligated for the full and total amount of any damage, injury, death or loss in any way connected with this permit.
20. The Permittee shall neither transfer this Use Permit nor sublet the said facilities or any part thereof, nor grant any interest, privilege, or license whatsoever in connection with this Use Permit without the prior written consent of the Adjutant General, or to his/her designated Representative.
21. The Permittee shall observe and comply with all laws, ordinances, rules and regulations of the Federal, State, Municipal or County governments affecting the facilities.
22. Prior to the termination of this Use Permit, the Permittee shall vacate the said facilities, remove all the property there from, and restore the premises to a condition satisfactory to the Adjutant General. If the Permittee shall fail or neglect to remove said property and so restore the premises, then, at the option of the Adjutant General, said property shall either become the property of the State of Hawaii without compensation therefore, or the Adjutant General may cause the property to be removed and the facilities to be restored at the expense of the Permittee and no claim for damages against the State of Hawaii or its officers or agents shall be created by or made on account of such removal and restoration work.
23. The acceptance of payment by the Adjutant General shall not be deemed a waiver of any breach by the Permittee of any term, covenant, or condition of this Permit nor of the Adjutant General's right to declare and enforce forfeiture for any such breach, and the failure of the Adjutant General to insist upon strict performance of any term, covenant, or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition or option.
24. The payment for the use of the facility shall be **\$ 500.00 /month**, payable to **State of Hawaii Department of Defense**.
25. The Permittee, upon execution of this Permit, shall deposit with the Adjutant General the sum of \$ -0- as security for the faithful performance of all of the

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terms and conditions herein. The whole or portion of said deposit will be returned to the Permittee upon termination of this Permit, but only after all the terms and conditions of this Permit have been observed and performed to the satisfaction of the Adjutant General or his designated representative.

26. The Permittee shall give the Adjutant General thirty (30) calendar days notice in writing before requesting termination of this Use Permit vacating the facilities.
27. The Adjutant General reserves the right to revoke this Permit at will with no prior notification to the Permittee in the event of threats to public safety or requests due to State emergencies.
28. If the Permittee does not vacate the facilities upon the revocation of the Permit by the Adjutant General, the Permittee shall pay to the State liquidated damages at the daily rate of **\$100.00** for each day, or portion thereof, the Permittee remains on the facilities beyond said date of revocation by the Adjutant General. Such payment is to be in addition to any other rights or remedies the Adjutant General may be entitled to pursue for breach of contract, or for illegal occupancy.
29. [~~The Permittee is also responsible for shared maintenance cost repair or upgrading of the parking area. The shared cost will be based on the ratio of total square footage area of the parking area under the Agency's management, to the total square footage area being utilized by the Permittee.~~] **Paragraph deleted (per Use Permit #12-011).**
30. [~~The Permittee will be responsible to reimburse the State of Hawaii, Department of Defense, for overtime work charges of State employees needed to work after regular duty hours, weekend days, or holidays for emergencies affecting the said property. This will be in addition to any applicable utility and maintenance fees.~~] **Paragraph deleted (per Use Permit #12-011).**
31. The use of the premises shall not be in support of any policy, which discriminates against anyone based upon race, creed, color, national origin, or a physical handicap.
32. If any part of this permit is declared invalid by any court, the remainder shall continue in full force and effect.
33. It may be necessary to review and possibly increase charges for the use of the State Department of Defense facilities. Should this occur, we will provide a 60-day advance notice to you.

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34. As in the past, should the Department require use of the facility for ongoing missions or activities, those activities will take precedence over your Use Permit. The facility administrator will contact you should that action be necessary.
35. Notwithstanding any of the provisions in the Use Permit or the foregoing, should Permittee be an agency of the State of Hawaii or any political subdivision thereof, the following provisions apply to this agreement:
  - a. Permittee acknowledges that the official executing the Agreement on behalf of the Permittee has the requisite legal authority to do so.
  - b. Nothing in this Agreement shall be construed as an indemnification by one party of the other for liabilities of a party or third persons for property loss or damage or death or personal injury arising out of and during performance of this agreement. Any liabilities or claims for property loss or damage or for death nor personal injury by a party or its agents, employees, contractors or assignees or by third persons, arising out of and during the performance of this agreement shall be determined according to applicable law.
  - c. For purposes of payment for the use of the facility or utilities, the parties may determine alternative methods of payment including but not limited to check, draft, journal voucher, or any other payment method that may be used as a matter of convenience.
36. Point of Contact for payment of fees:  
Mr. Tom Moriyasu  
Business Management Officer  
Administrative Services Office  
Telephone No. (808) 733-4260.
37. Contact person for emergency maintenance work:  
Mr. Patrick Tangonan  
Cell Phone No. (808) 620-0590  
Work Phone No. (808) 733-4282

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I ACKNOWLEDGE THAT I HAVE READ THIS USE PERMIT ENTIRELY AND THAT I UNDERSTAND AND AGREE TO ALL OF ITS PROVISIONS.

This Use Permit together with the conditions thereof (and the enclosures) is hereby accepted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

By: \_\_\_\_\_  
LEI FOUNTAIN  
Executive Director  
The Arc in Hawaii

By the authority under Section 121-19, Hawaii Revised Statutes, I hereby set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

STATE OF HAWAII

By: \_\_\_\_\_  
LLOYD K. MAKI R.A.  
Acting Chief Engineering Officer

APPROVED AS TO FORM:

\_\_\_\_\_  
MICHAEL S. VINCENT  
Deputy Attorney General

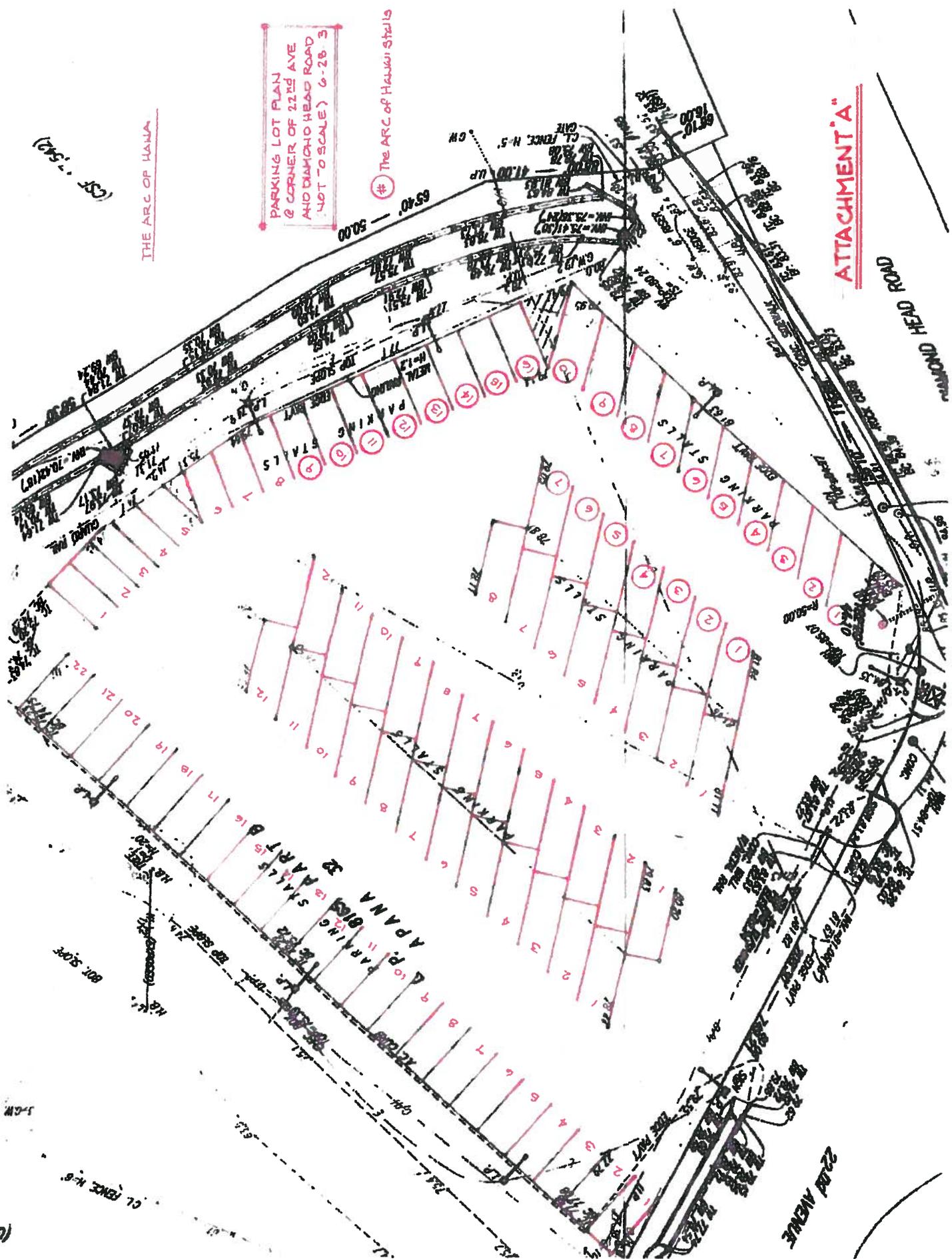
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THE ARC OF HAWAII

PARKING LOT PLAN  
& CORNER OF 22ND AVE  
AND DIAMOND HEAD ROAD  
(NOT TO SCALE) 6-28-3

# The ARC of Hawaii Stalls

ATTACHMENT 'A'



DIAMOND HEAD ROAD

22ND AVENUE

DRIVEWAY

CL. FENCE N.S.

GATE

STAIRS

DRIVEWAY

NEIL ABERCROMBIE  
GOVERNOR



DARRYLL D. M. WONG  
MAJOR GENERAL  
ADJUTANT GENERAL

JOSEPH K. KIM  
BRIGADIER GENERAL  
DEPUTY ADJUTANT GENERAL

STATE OF HAWAII  
**DEPARTMENT OF DEFENSE**  
OFFICE OF THE ADJUTANT GENERAL  
3949 DIAMOND HEAD ROAD  
HONOLULU, HAWAII 96816-4495

MAY 05 2014

TO: Honorable William J. Aila, Jr.  
Chairperson and Member, Board of Land and Natural Resources

FROM: *for* Major General Darryll D. M. Wong  
Adjutant General, Hawai'i National Guard

SUBJECT: Request approval of a Use Permit between the use of State of Hawaii, Department of Defense (DOD) and the Arc in Hawaii for the use of a portion of the paved parking lot, located at the intersection of Diamond Head Road and 22nd Avenue, Honolulu, Oahu TMK (1) 3-1-042: 041

In accordance with §171-11 Hawai'i Revised Statutes, which requires the approval of the Board of Land and Natural Resources where the use of facilities will exceed 14-days, attached is a request to allow the DOD to issue a Use Permit to the Arc in Hawaii, for a period of one (1) year, for the use of a portion (25-parking stalls) of the paved parking lot, located at the intersection of Diamond Head Road and 22nd Avenue. This parking lot contains a total of 87 parking stalls, and is generally not used except for DOD mission activities such as those occurring at the Armory Facility (Building 300) located directly across the parking lot, or at the DOD Headquarters at 3949 Diamond Head Road. Use is also occasionally permitted to other requestors (on a non-interference basis) such as the film industry upon approval of the Department of Business, Economic Development and Tourism.

The Arc in Hawaii is a 501(c) (3) not-for-profit organization, providing services for people with intellectual and developmental disabilities on Oahu. Their facility, located at 3989 Diamond Head Road, adjoins the DOD Headquarters on one side, and the DOD's paved parking lot on the other. Due to their limited on-site parking availability, the Arc in Hawaii requests use of a portion of the DOD's parking lot for their staff parking. The Arc in Hawaii will be assessed at a rate of \$500/month to reimburse the DOD for the utility and maintenance costs relative to the use of the parking lot.

ITEM M-1